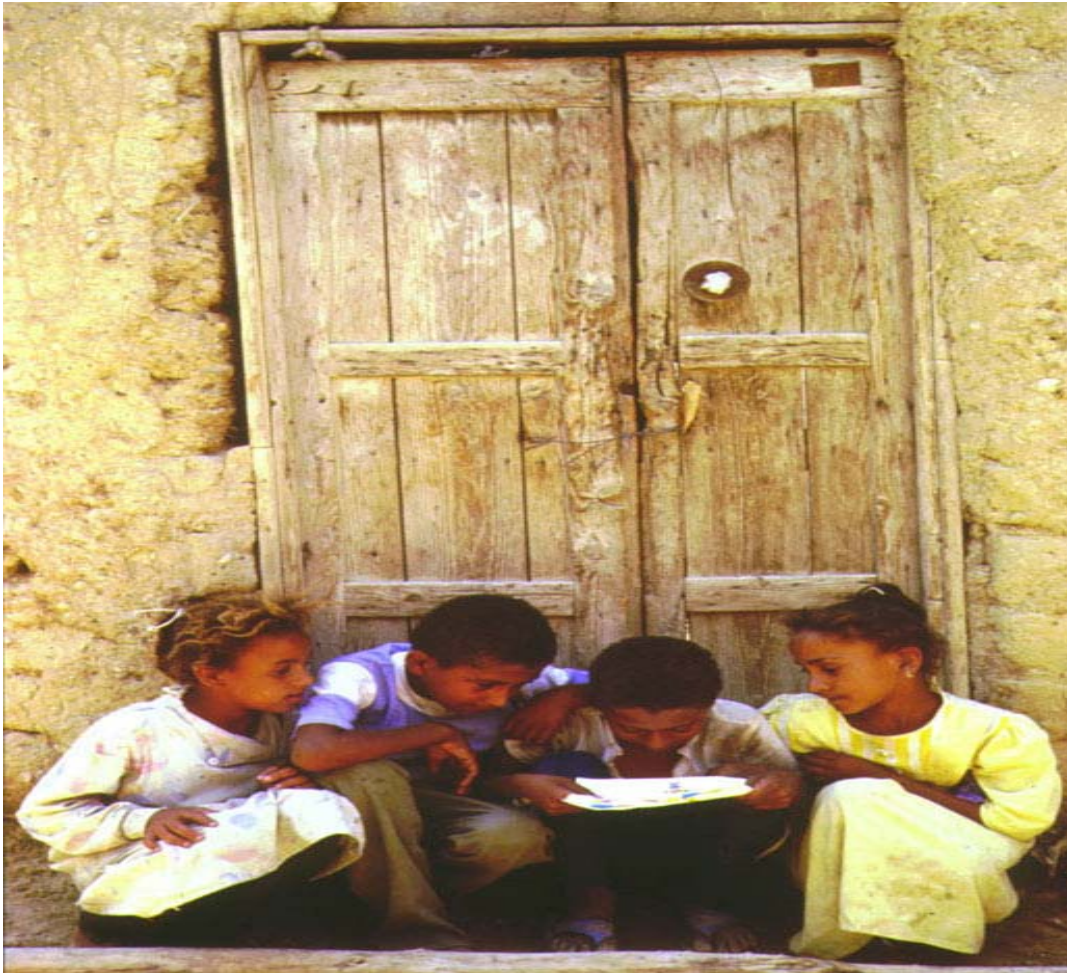




THE SPECIAL EDITION

A QUARTERLY PUBLICATION



Tennessee Department of Education, Division of Special Education
710 James Robertson Pkwy. Nashville, TN 37243 (615)741-2851

Volume I, Issue I

Dr. Lana Seivers - Commissioner

April 2003

Joseph Fisher – Assistant Commissioner

Benton McDonough - Editor



THE SPECIAL EDITION

VOLUME I, ISSUE I

DIVISION OF SPECIAL
EDUCATION

THE SPECIAL EDITION
April 21, 2003

Message from the Assistant Commissioner

Dear Reader,

As you are aware, over the last several months, there have been some significant changes in Tennessee State Government, including the leadership within this department. The state has a new governor, and with this change in administration comes a new method regarding the way issues are approached.

The Tennessee Department of Education (TDOE) has a new commissioner in Dr. Lana Seivers. Commissioner Seivers brings with her new ideas and a fresh approach toward the issues at hand. Commissioner Seivers comes from Anderson County with a proven track record as the superintendent of Clinton City Schools. During Commissioner Seivers' tenure in Clinton, student achievement scores steadily improved in vital areas making it near the top state achievement scores. Teacher pay steadily increased as well, helping the city recruit and retain superb instructors.

Commissioner Seivers envisions the TDOE being a more responsive entity. The Division of Special Education has enacted several initiatives to ensure Commissioner Seivers' ideas are carried out. Some examples of these initiatives are: A quarterly newsletter that will keep superintendents, principals, teachers, and parents informed on the issues important to the new administration. Next, we want to stress the importance of technical assistance that is currently available to state and local school systems. Finally, there will be a new emphasis placed on the areas of greatest need. This includes areas that were previously overlooked and given less attention in the past. These are just some examples of the new guidelines we will be following. We hope this newsletter will assist us in reaching these goals as we work with you to strengthen our educational system.

Sincerely,

Joseph Fisher

Assistant Commissioner

INSIDE THIS ISSUE

THE ASSISTANT COMMISSIONER'S CORNER

Department
Overview

1

GATEWAY OR TCAP-ALT

Which one is the
right one for your
child?

2

ADMINISTRATIVE COMPLAINTS

Communication

Chip Fair

2-3

CALENDAR Upcoming Events

3, 7

TECHNICAL SUPPORT

Linda Copas

3

LEGAL CORNER

A Case of Special
Education

Bill Ward

4

CAPITOL HILL

Who's on the Hill

Benton
McDonough

5-6



GATEWAY OR TCAP-ALT?

By Christy Gunn

The following steps, regarding Gateway / TCAP-Alt, should take place during the high school years:

- Before the student enters the ninth grade a determination on whether the student qualifies for TCAP-Alt needs to be made by the IEP Team.
- If the child has met the requirements for participation in the TCAP-Alt program, then Participation Guidelines for the TCAP-Alt need to be a part of the IEP.
- A high school student meeting the guidelines for TCAP-Alt has the choice of participating in the TCAP-Alt or Gateway Assessment.
- A student that meets TCAP-Alt participation guidelines, and plans to participate in the alternate assessment, will begin this assessment in the ninth grade continuing through the eleventh grade.
- A student who does not meet the participation guidelines for the TCAP-Alt must participate in Gateway Assessments during the high school years, thereby working towards a regular high school diploma.

A student participating in TCAP-Alt who wants to obtain a regular diploma may also take part in the Gateway Assessment program. To receive a regular diploma the student must reach the cut off score in Algebra I, Biology, and English II during the high school years.

REMINDER

LEAs must score alternate portfolio assessments and scores must be turned in by April 30th.

ADMINISTRATIVE COMPLAINTS

By Chip Fair

This is the first in a series of installments that will deal with the Administrative Complaint process. Each issue of this newsletter will contain:

- information about the concerns that we receive telephone calls about,
- the concerns that end up being submitted as Administrative Complaints, and
- strategies that parents and school systems can use to keep concerns from becoming Administrative Complaints.

If I had to choose one word to describe what would probably prevent the majority of parent concerns from becoming Administrative Complaints, that word would be "communication."

From the moment that parents request the school test their child, through the evaluation process, to the determination of eligibility, the initial IEP meeting and placement, better communication would more effectively inform and involve the parent in the IEP process.

One thing schools/systems can do to improve communication is to respond to parental questions and concerns immediately. A question unanswered may become a concern that if ignored becomes an issue in an Administrative Complaint that could have been avoided by...communication.

Educators live with the special education process daily. The language, the acronyms, the procedures are second nature to us. But, think about the parent. Special education is a complex, confusing, combination of law, regulations, and "best practice." A parent's confusion becomes concern and that concern can become a complaint. The task looms large before us, for there are a myriad of ways that parents come into contact with misinformation. Friends, family, a well meaning stranger, even the Internet can all be an asset one minute and an incorrect or misquoted source the next. *(continued on page 3)*



CALENDAR

April is National Autism
Awareness Month!

Work-Based Learning Training:

Murfreesboro: Holiday Inn

June 3,4,5

Knoxville: Downtown Hilton

May 27,28,29

Jackson: Location TBD

June 10,11,12

For further information on
Work-Based Learning training,
please contact Linda Copas
Autism/Behavior/Programs &
Services Coordinator at:
615.741.7790 or e-mail her at:
Linda.Vandermeer@state.tn.us.

April 22, 2003

Teleconference

11:00 a.m. - 12:00 p.m. at
WNPT, 161 Rains Avenue,
Nashville, Tennessee.
"Improving Outcomes in Schizo-
phrenia: Recent Advances in the
Treatment of Cognitive and
Affective Domains."

(for taped copies e-mail
john.rainey@state.tn.us).

GATEWAY INSTITUTES:

The Phase I and/or Phase II
Regional Gateway Institutes are
offered throughout the summer
of 2003. Secondary Special
Education teachers responsible
for Math - English - and Biology
instruction are encouraged to
attend. See page 7 for schedule
and additional information.

Special Education teachers inter-
ested in attending phase I or
phase II institutes this summer
should contact your special
education supervisor for further
details.

(continued from page 2)

We, here at the Division of Special Education, strive to offer answers and explanations to parents and school personnel who call us. So much of the law and regulations pertaining to special education is open to interpretation, we are the arm of the State Department of Education that is available to provide accurate answers to your questions and concerns.

TECHNICAL SUPPORT

By:

Linda Copas

Technical Assistance for behavior is offered by the Division of Special Education. Assistance is available to Local Education Agencies, parents and other individuals needing assistance in the area of behavior. We not only assist parents in providing positive behavior supports at home, but also assist in:

- Observations,
- Conducting Functional Behavior Assessments,
- Writing behavior plans,
- Determining appropriate services,
- Evaluating services, and
- Provide teacher training in positive behavior supports and management.

For further assistance you may contact one of our Regional Resource Centers:

- East Tennessee Regional Resource Center (865)594-5691
- Middle Tennessee Resource Center, Andrew Johnson Tower (615)741-7790
- West Tennessee Resource Center (731)421-5074

The Department of Education also directs the **Make a Difference Project**. There are also five universities in Tennessee under contract to the Division of Special Education that provide behavioral assistance to school systems and parents with the **Make A Difference Project** with a focus on inclusionary settings. These schools and their contact information are as follows:

- University of Memphis – Paul Ayers (901) 678-5773 (**RISE**)*
- Tennessee State University – Cornell Lane (615) 963-7396
- Tennessee Tech University – John Wheeler (931) 372-3095
- East Tennessee State University – Jim Fox (423) 439-7556
- UT, Knoxville – Jennifer Butterworth (865) 974-2760 (**LRE Project**)*

*In addition to working with Make A Difference Project, Paul Ayers works with the Rise Project West, and Jennifer Butterworth works with LRE for middle and east Tennessee.



Legal Corner: *A Case of Special Education*

Prepared by Bill Ward, Esq.

The following is the first in a series of quarterly looks at significant legal issues and rulings affecting special education in Tennessee. In this issue we will explore recent rulings involving attorney's fees, damages, FERPA, and two new due process hearing decisions.

Attorney's Fees

In *Buckhannon Bd & Care Home Inc et al v. West Virginia DHHS et al*, 121 S.Ct.1835 (U.S. 2001), an action brought under the Fair Housing Amendments Act (FHAA) and Americans with Disabilities Act (ADA), the U.S. Supreme Court held that fee-shifting provisions of FHAA and of ADA require a party to secure either a judgment on the merits or court-ordered consent decree in order to qualify as "prevailing party". Prevailing party status is required to recover attorney fees in administrative due process hearings. The 2nd U.S. Circuit Court of Appeals has recently held that the Buckhannon ruling also applies to due process hearings conducted under the IDEA and Section 504 of the Rehabilitation Act, *J.C. Regional School District 10, Bd. Broad of Education 278 F.3d 119 (2d Cir. 2002)*. This means if a due process hearing concludes prior to final adjudication with an agreement between the parties the hearing officer must endorse the agreement by incorporating the agreement into an agreed order, consent decree and/or settlement decree before the parent can qualify as prevailing party for purposes of collecting attorney's fees. This ruling vitiates the so called "catalyst theory" which argues that the filing for a due process hearing in itself causes a change in the relationship between the parent and the LEA.

Damages

It has long been held that compensatory and punitive damages are not available under the IDEA in the 6th Circuit (i.e. Tennessee, Kentucky, Ohio, & Michigan). The Supreme Court has now ruled punitive damages (damages awarded in addition to actual damages to punish the defendant for acting with reckless, malice or deceit) are not recoverable under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act. (*Barnes v. Gorman*, 122 S.Ct. 2097)

FERPA

The Supreme Court has issued two long awaited opinions involving The Family Educational Rights and Privacy Act (FERPA). In *Owasso Independent School District No. 10011 v. Falvo*, 122 S.Ct. 934 (U.S. 2002), a case in which peer grading was challenged as a breach of the of educational record's confidentiality contemplated under FERPA, the court ruled peer grading does not violate FERPA and further opined that grades are not educational records until the teacher has recorded them. In the second case, *Gonzaga University v. Doe*, 122 S.Ct. 2268 (U.S. 2002) they held no right to private action (lawsuits for damages) exists for violations of FERPA regulations.

New Due Process Rulings

Closer to home, DOE due process hearing officers have ruled in two cases involving children with disabilities placed by Tennessee Department of Children's Services (DCS) in DOE approved schools located at DCS contract facilities. At issue was the responsibility to provide FAPE to these students. More specifically, does this responsibility lie with DCS, DOE, or the DCS contract facility? In both cases, the hearing officers have held ultimate responsibility lies with DCS.

**CAPITOL HILL****STATE SENATE EDUCATION COMMITTEE**

302 War Memorial Building
Nashville, Tennessee 37243
615.741.6806

Chairman – Senator Randy McNally (R-5)

307 War Memorial Building
Nashville, TN 37243
615.741.6806

sen.randy.mcnelly@legislature.state.tn.us

Vice-Chairman – Senator Roscoe Dixon (D-33)

9A Legislative Plaza
Nashville, TN 37243
615.741.4158

sen.roscoe.dixon@legislature.state.tn.us

Secretary – Senator Charlotte Burks (D-15)

9 Legislative Plaza
Nashville, TN 37243
615.741.3978

sen.charlotte.burks@legislature.state.tn.us

Senator Ben Atchley (R-6)

303 War Memorial Building
Nashville, TN 37243
615.741.3791

sen.ben.atchley@legislature.state.tn.us

Senator Ward Crutchfield (D-10)

13 Legislative Plaza
Nashville, TN 37243
615.741.6682

sen.ward.crutchfield@legislature.state.tn.us

Senator Rusty Crowe (R-3)

321 War Memorial Building
Nashville, TN 37243
615.741.2468

sen.rusty.crowe@legislature.state.tn.us

Senator Jo Ann Graves (D-18)

4 Legislative Plaza
Nashville, TN 37243
615.741.1654

sen.joann.graves@legislature.state.tn.us

Senator Bill Ketron (R-13)

305 War Memorial Building
Nashville, TN 37243
615.741.6853

sen.bill.ketron@legislature.state.tn.us

Senator Larry Trail (D-16)

8A Legislative Plaza
Nashville, TN 37243
615.741.1066

sen.larry.trail@legislature.state.tn.us

Committee Secretary – Anne Rasmussen

Research Analyst – Rick Nicholson



HOUSE EDUCATION COMMITTEE K-12

36 Legislative Plaza
Nashville, Tennessee 37243
615.741.2189

Chair – Rep. Joe Towns, Jr. (D-84)

36 Legislative Plaza
Nashville, TN 37243
615.741.2189

rep.joe.towns@legislature.state.tn.us

Rep. Diane Black (R-45)
107 War Memorial Building
Nashville, TN 37243
615.741.1999

rep.diane.black@legislature.state.tn.us

Rep. Harry Brooks (R-19)
207 War Memorial Building
Nashville, TN 37243
615.741.6879

rep.harry.brooks@legislature.state.tn.us

Rep. Tommie Brown (D-28)
36 Legislative Plaza
Nashville, TN 37243
615.741.4374

rep.tommie.brown@legislature.state.tn.us

Rep. Steve Godsey (R-1)
212 War Memorial Building
Nashville, TN 37243
615.741.7623

rep.steve.godsey@legislature.state.tn.us

Rep. Ulysses Jones, Jr. (D-98)
35 Legislative Plaza
Nashville, TN 37243
615.741.4575

rep.ulysses.jones@legislature.state.tn.us

Rep. Mark Maddox (D-76)

17 Legislative Plaza
Nashville, TN 37243
615.741.7847

rep.mark.maddox@legislature.state.tn.us

Rep. Richard Montgomery (R-12)
207 War Memorial Building
Nashville, TN 37243
615.741.5981

rep.richard.montgomery@legislature.state.tn.us

Rep. Larry Turner (D-85)
37 Legislative Plaza
Nashville, TN 37243
615.741.6954

rep.larry.turner@legislature.state.tn.us

Rep. Les Winningham (D-38)
36 Legislative Plaza
Nashville, TN 37243
615.741.6852

rep.les.winningham@legislature.state.tn.us

Committee Secretary - Jan Pirtle

Research Analyst - Jennifer Gardner

Editor's Note:

All articles contained in this newsletter were gathered for the specific purpose of sharing information and should not be taken as a direct endorsement by the Tennessee Department of Education or the Division of Special Education.



Announcing Regional Gateway Institutes 2003

Date	Phase	Location	Gateway Consultant
June 9-10	II	Hamilton Co.	Kathy Moore 615.859.2949
June 9-10	II	Weakley Co.	Cecelia Patrick 901.362.2235
June 16-17	II	Williamson Co.	Angie Ketchum 615.791.4648
June 23-26	I	Sevier Co.	Kathy Moore 615.859.2949
June 23-26	I	Bedford Co.	Judy Moore 615.859.1661
June 23-26	I	Henderson Co.	Daphne Jones 901.240.6095
July 7-10	I	McMinn Co.	Angie Ketchum 615.791.4648
July 7-10	I	Tipton Co.	Cecelia Patrick 901.362.2235
July 14-17	I	Sumner Co.	Judy Moore 615.859.1661
July 21-22	II	Greene Co.	Angie Ketchum 615.791.4648
July 21-22	II	Lincoln Co.	Judy Moore 615.859.1661
July 21-22	II	Huntingdon	Daphne Jones 901.240.6095

To register for any of the institutes listed above, contact your building principal or system curriculum supervisor for an application.

For More Information Contact:

Deborah H. Williams

Gateway and Intervention Coordinator

615.253.5710

deborah.h.williams@state.tn.us

Note to the Reader:

This is the first issue of *Special Edition*. This replaces the newsletter formerly known as the "Coffee Bean." We hope this newsletter gave you a good synopsis of the Division of Special Education and the different programming we have to offer you. Any advice you would like to give us, whether it is an example of how we can improve our newsletter or another topic you would like to see covered in future issues, would be greatly appreciated. You can call Benton McDonough at 615.532.9792 or e-mail him at benton.mcdonough@state.tn.us. Thank you for your support.



Department of Education; April, 2003; Publication Authorization No. 331139; 1,414 copies. This public document was promulgated at a cost of \$ 0.1139 per copy.